

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE: : CASE NO.: 24-10239  
:  
: CHAPTER: 13  
Giovanni DiGiulio, :  
: HON. JUDGE:  
: Hon. Philip Bentley  
Debtor. :  
: HEARING DATE: May 2, 2024  
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**NOTICE OF MOTION FOR RELIEF FROM AUTOMATIC STAY**

**PLEASE TAKE NOTICE**, that upon the application of SN Servicing Corporation as servicer for U.S. Bank Trust National Association, as Trustee of Dwelling Series IV Trust (together with any successor or assign, “Movant”), the undersigned shall move this Court for an Order, pursuant to 11 U.S.C. § 362 (d)(1); vacating the automatic stay to permit Movant, its successors and/or assigns, to enforce its mortgage on the Debtor’s premises located at 44 East 12th Street, Unit 5A, New York, NY 10003; granting Movant reasonable attorney fees and costs; and granting Movant such other and further relief as is just and proper.

This motion shall be heard remotely at the United States Bankruptcy Court, Southern District of New York, One Bowling Green, New York, NY 10004-1408 on the 2nd day of May, 2024 at 10:00 A.M., or as soon thereafter as counsel may be heard.

Judge Bentley is holding all non-evidentiary hearings via Zoom®. Participants are required to register their appearance by 4:00 PM one business day before the scheduled hearing with our

new eCourt Appearances tool, which can be found at <https://ecf.nysb.uscourts.gov/cgi-bin/nysbAppearances.pl>.

**PLEASE TAKE FURTHER NOTICE**, that answering affidavits, if any, must be served so as to be received not later than seven (7) days before the return date of this motion.

Dated: Garden City, New York  
March 29, 2024

By: /s/ Michael L. Carey  
Michael L. Carey, Esq.  
FRIEDMAN VARTOLO LLP  
Attorneys for Movant  
1325 Franklin Avenue, Suite 160  
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TO:

Giovanni DiGiulio  
44 East 12th Street, Unit 5A  
New York, NY 10003  
Bankruptcy Pro-Se Debtor

Thomas C. Frost, Esq.  
399 Knollwood Road, Suite 102  
White Plains, NY 10603  
Bankruptcy Trustee

United States Trustee  
Alexander Hamilton Custom House  
One Bowling Green, Room 534  
New York, NY 10004-1408  
United States Trustee

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**MOTION FOR RELIEF FROM THE**  
**AUTOMATIC STAY REGARDING REAL PROPERTY**

Michael L. Carey, Esq., an attorney at law duly admitted to practice before the Courts of the State of New York and the U.S. District for the Southern District of New York, hereby affirms the following to be true under penalty of perjury:

SN Servicing Corporation as servicer for U.S. Bank Trust National Association, as Trustee of Dwelling Series IV Trust (together with any successor or assign, "Movant") hereby moves this Court, pursuant to 11 U.S.C. § 362 (d)(1); vacating the automatic stay to permit Movant, its successors and/or assigns, to enforce its mortgage on the Debtor's premises located at 44 East 12th Street, Unit 5A, New York, NY 10003 granting Movant reasonable attorney fees and costs; and granting Movant such other and further relief as is just and proper. In support of this Motion, Movant respectfully states:

### **FACTUAL HISTORY**

1. Movant is a secured creditor of the Debtor pursuant to a Note executed by Giovanni DiGiulio (the “Debtor”) on October 23, 2003, whereby the Debtor promised to repay \$468,750.00 plus interest to Ameriquest Mortgage Company (the “Note”). To secure the repayment of the Note, Giovanni DiGiulio executed a Mortgage (the “Mortgage,” Note and Mortgage, collectively, the “Loan”) in favor of Ameriquest Mortgage Company, which was recorded on September 16, 2004, in the New York County Clerk’s Office as Instrument No. 2004000581761 (the “Mortgage”) encumbering the Property. The Loan was ultimately assigned to Movant by an assignment of mortgage recorded on November 30, 2020 (the “Assignment of Mortgage”). Copies of the Note, Mortgage, Loan Modification, and Assignments of Mortgage are attached hereto as **Exhibit A**.

2. A Petition under Chapter 13 of the United States Bankruptcy Code was filed with respect to the Debtor on February 14, 2024.

### **LEGAL ARGUMENT**

1. The Debtor has failed to make current mortgage payments due under the terms of the Loan. As a result, the Loan remains pre-petition due for April 1, 2018 and post-petition due for March 1, 2024, and each subsequent payment thereafter.

2. Pursuant to 11 U.S.C. § 362(d)(1), the court shall enter an order granting a secured creditor relief from the automatic stay for cause “including the lack of adequate protection of an interest in property of such party and interest.”

3. Specifically, courts have found cause for the granting of relief from an automatic stay where the debtor has failed to make post-petition mortgage payments as they become due. *In Re Taylor*, 151 B.R. 646, 648 (Bankr. E.D.N.Y. 1993).

4. A copy of the Relief from Stay-Real Estate and Cooperative Apartments (“Affidavit”) is attached hereto as **Exhibit B**.

5. Movant respectfully requests reasonable attorney fees in the amount of \$1,050.00 and costs in the amount of \$199.00.

**WHEREFORE**, Movant respectfully requests an Order of this Court vacating the automatic stay for cause pursuant to 11 U.S.C. § 362 (d)(1); vacating the automatic stay to permit Movant, its successors and/or assigns, to enforce its mortgage on the Debtor’s premises located at 44 East 12th Street, Unit 5A, New York, NY 10003 granting reasonable attorney fees and costs; and for such other, further and different relief as to this Court may deem just, proper, and equitable.

Dated: Garden City, New York  
March 29, 2024

By: /s/ Michael L. Carey  
Michael L. Carey, Esq.  
FRIEDMAN VARTOLO LLP  
Attorneys for Movant  
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